

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,  
Plaintiff,

WALKER RIVER PAIUTE TRIBE,  
Plaintiff-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT,  
et al.,

Defendants.

WALKER RIVER PAIUTE TRIBE,  
Counterclaimant,

UNITED STATES OF AMERICA,  
Counterclaimant-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT,  
Counterdefendant,

STATE OF NEVADA,  
Counterdefendant-Intervenor.

The United States (hereinafter U.S.) and the Walker River  
Paiute Tribe (hereinafter Tribe) have filed separate but

IN EQUITY NO. C-125  
SUBFILE NO. C-125B

ORDER

1 substantively similar counterclaims against the Walker River  
2 Irrigation District. The State of Nevada has intervened as a  
3 Counterdefendant (Doc. #7).

4 By order filed October 27, 1992, this Court deemed that  
5 what the Tribe and the U.S. designated counterclaims were in  
6 reality cross-claims and would be allowed to proceed on that basis.  
7 (Doc. #15). For clarity's sake we will continue to refer to the  
8 Tribe's and the U.S.'s pleadings as counterclaims although they are  
9 proceeding as cross-claims.

10 The substance of the counterclaims comprising subfile  
11 number C-125-B, are claims by the Tribe and the U.S. requesting  
12 this Court to recognize additional water rights to waters from the  
13 Walker River and its tributaries for the Tribe.

#### 14 HISTORY

15 This Court entered a final decree establishing the rights  
16 to the waters of the Walker River as between the United States  
17 acting for the Tribe and competing claimants in 1936. United  
18 States v. Walker River Irrigation District, 1 F.Supp. 158 (D.Nev.  
19 1935). On appeal the Ninth Circuit reversed some of the District  
20 Court's holdings. United States v. Walker River Irrigation  
21 District, 104 F.2d 334 (9th Cir. 1939). The decree was amended to  
22 conform to the mandate from the Court of Appeals on April 24, 1940.

23 The final decree determined various water rights of  
24 competing claimants to waters from the Walker River, including a  
25 determination that the United States, for the Walker River Paiute  
26 Tribe, was entitled to the continuous flow of 26.25 cubic feet of

1 water per second, to be diverted from the Walker River during the  
2 irrigation season of one hundred and eighty days for the irrigation  
3 of two thousand one hundred acres of land on the reservation.  
4 Among the rights to the use of water adjudicated by the decree were  
5 determinations of the quantity of water a claimant was entitled to,  
6 the priority date of such entitlement and the uses of water upon  
7 which the claim was founded and the land on which the water was to  
8 be used.

9 The decree adjudicated only the rights of the claimants  
10 to the surface waters of the Walker River and did not concern  
11 itself in any way with underground water rights.

12 The current counterclaims of the U.S. and the Tribe seek  
13 to establish new and additional water rights. Both parties claim  
14 a new right to store waters drawn from the Walker River at Weber  
15 dam, rather than being limited to immediate use of the water. Both  
16 parties also seek a right to use waters from the Walker River on  
17 reservation lands not contemplated by the decree. Apparently, the  
18 Tribe was restored to possession of additional reservation lands in  
19 1936, after the close of evidence in the original litigation.  
20 Therefore, the final decree does not allow the Tribe to use water  
21 drawn from the Walker River on the new reservation lands, but only  
22 on the old lands which were currently in the possession of the  
23 Tribe at the close of evidence. Finally, it appears that the U.S.  
24 and the Tribe seek a determination that when the new reservation  
25 lands were restored to the Tribe in 1936, a federal implied  
26 reservation of water rights was also granted. Thus, the U.S. and

1 the Tribe are seeking a determination that they are entitled to  
2 additional waters from the Walker River, for use on the restored  
3 lands.

4 **DISCUSSION**

5 The question currently before the Court is whether our  
6 order of October 27, 1992 (Doc. #15) requiring that "all claimants  
7 to the water of Walker River and its tributaries must be joined as  
8 parties to the [Tribe's counterclaim,]" extends to groundwater  
9 claimants and users in the Walker River basin.

10 The U.S. originally filed a Motion for Instructions and  
11 Order (Doc. #23) requesting the Court to clarify its prior order  
12 (Doc. #15). In the Motion for Instructions and Order (Doc. #23)  
13 the U.S. took no position, but merely indicated its need for  
14 clarification. Subsequently, the Tribe in its Response (Doc. #26)  
15 took the position that such groundwater claimants must be joined as  
16 necessary parties pursuant to Fed.R.Civ.P. 19. Thereafter, the  
17 U.S. in its Reply (Doc. #29) abandoned its neutral posture and also  
18 took the position that groundwater claimants in the Walker River  
19 basin must be joined as necessary parties. <sup>1</sup>

20 \_\_\_\_\_  
21 <sup>1</sup> Federal Rule of Civil Procedure 19 requires  
that

22 [a] person who is subject to service of process and whose  
23 joinder will not deprive the court of jurisdiction over the  
24 subject matter of the action shall be joined as a party in the  
25 action if (1) in the person's absence complete relief cannot  
26 be accorded among those already parties, or (2) the person  
claims an interest relating to the subject of the action and  
is so situated that the disposition of the action in the  
person's absence may (i) as a practical matter impair or  
impede the person's ability to protect that interest or (ii)  
leave any of the persons already parties subject to a  
substantial risk of incurring double, multiple, or otherwise

1           The U.S. and the Tribe assert that the groundwaters of  
2     the Walker River basin are hydrologically connected to and are part  
3     of a single unitary water supply with the surface waters of the  
4     Walker River and its tributaries. Based on this assertion, the  
5     U.S. and the Tribe speculate that increased groundwater use will  
6     eventually compete with surface water use, in that use of one  
7     source of supply necessarily comes at a loss to the other. On this  
8     basis, the U.S. and the Tribe assert that all water in the Walker  
9     River Basin forms a single res and to do full justice in equity,  
10    all claimants to water from that single res, be they ground or  
11    surface water claimants, must be joined.

12           **A. CLAIM TO GROUNDWATER RIGHTS**

13           Although it is not clearly alleged in the Counterclaim of  
14    the U.S. or the Tribe, it appears that the U.S. at least  
15    contemplates a possibility that its counterclaim seeking additional  
16    water rights for the restored lands encompasses a claim to  
17    groundwater rights. See, U.S. Reply, (Doc. #29) at pp. 5-6.

18           The U.S. never plainly states that it is seeking  
19    groundwater rights. Rather the U.S. states that if "investigations  
20    indicate that groundwater will be necessary to fulfill the purposes  
21    of the federal reservation of these [restored] lands, then the  
22    United States, and presumably the Tribe, fully intend to assert  
23    rights to the groundwater. . . ." Id. at p. 6, ln. 7-10.

24           A possible future claim by the U.S. and/or the Tribe to  
25    groundwater rights is not sufficient to justify current joinder

26           \_\_\_\_\_

          inconsistent obligations by reason of the claimed interest.

1 into this litigation of all groundwater claimants in the Walker  
2 River basin. Mere speculation by the U.S. is insufficient to  
3 justify such joinder. See, ARMCO Steel Corp. v. United States, 490  
4 F.2d 688, 690 (8th Cir. 1974) (district court erred in ordering  
5 joinder on hypothetical state of facts). At such time as the U.S.  
6 and/or the Tribe do assert claims to groundwater rights, it may be  
7 necessary to join other parties, but at this time the mere  
8 possibility is insufficient to require joinder under Rule 19.

9 Without deciding this issue at this time, the Court notes  
10 that even if a claim to groundwater rights was currently asserted,  
11 the U.S. has alleged no reason why joinder of all groundwater  
12 claimants in the Walker River basin is required. While there has  
13 been some indication in supporting documents (see exhibits attached  
14 to Doc. #29) that groundwater sources are hydrologically connected  
15 to each other and to the Walker River, there is nothing to indicate  
16 the extent of this connection is such that withdrawal of  
17 groundwater on the restored reservation lands will have any effect  
18 on surrounding groundwater claimants.

19 All that is offered is speculation. It is possible that  
20 groundwater withdrawal on the reservation lands will affect other  
21 groundwater claimants, but it is a truism that nearly anything is  
22 possible. The U.S. must offer more than a mere possibility to  
23 justify joinder under Fed.R.Civ.P. 19.

24 For the above reasons, the potential claim by the U.S.  
25 and/or the Tribe that they are entitled to groundwater rights is  
26

1 insufficient to justify joinder under Rule 19 of all groundwater  
2 claimants in the Walker River basin.

3 **B. CLAIMS FOR ADDITIONAL WATER RIGHTS**

4 As noted in our previous order (Doc. #15),

5 [i]n this case the Tribe and the United States  
6 want the Court to recognize additional water  
7 rights for the Tribe and integrate these  
8 rights into the Decree. Such a recognition  
9 might have the effect of reducing the water  
10 allocated to other federal rights holders or  
11 altering the priority which their allocation  
is given. Such a recognition may also give  
the Tribe's newly recognized rights priority  
over claimants who acquired their rights  
through a state permit. Thus, the claimants  
to the water of the Walker River clearly have  
an interest in the action.

12 Order, (Doc. #15) p. 5, ln. 22- p. 6, ln. 4.

13 Therefore, the Court ordered "[i]n accordance with Rule  
14 19, all claimants to the water of Walker River and its tributaries  
15 must be joined as parties to the claim." Id. at p. 6, ln. 14-16.

16 The Court's order certainly appears clear in its intent  
17 that only claimants to the water of Walker River and its  
18 tributaries, need be joined.

19 **1. Surface and Ground Waters are Separate but Related  
20 Resources**

21 The Court throughout the course of this litigation, has  
22 considered ground water separately from surface water. Nevada  
23 state law treats surface and ground waters as separate although  
24 related resources. See e.g., NRS ch. 533 & 534; see also  
25 Cappaert v. United States, 426 U.S. 128, 142 (1975) (Supreme Court  
26 noting that Nevada itself may recognize the potential  
interrelationship between surface and ground water since Nevada

1 applies the law of prior appropriation to both.) Several specific  
 2 statutes in these chapters indicate that under state law, competing  
 3 claims of ground and surface water claimants might require joinder  
 4 of all the claimants to settle the competing water claims. See  
 5 e.g., NRS §§ 533.240, 534.015 & 534.100-534.120.

## 6 2. State Law is Inapplicable

7 The requirements and procedures of state law are however,  
 8 inapplicable in this action. As the Supreme Court reaffirmed in  
 9 Cappaert v. United States, 426 U.S. 128, 145 (1975), a federal  
 10 implied-reservation-of-water-rights and federal water rights in  
 11 general "are not dependent upon state law or state procedures[.]"  
 12 The U.S. and the Tribe assert that the additional water rights they  
 13 are now claiming were impliedly reserved.

14 [W]hen the Federal Government withdraws its  
 15 land from the public domain and reserves it  
 16 for a federal purpose, the Government, by  
 17 implication, reserves appurtenant water then  
 18 unappropriated to the extent needed to  
 19 accomplish the purpose of the reservation. In  
 so doing the United States acquires a reserved  
 right in unappropriated water which vests on  
 the date of the reservation and is superior to  
 the rights of future appropriators. . . . The  
 doctrine applies to Indian reservations[.]

20 Id. at 138. The Court also held that the doctrine applies to  
 21 both surface and underground supplies of water. Id. at 142-43.

22 The only limit on the Federal Government's power to  
 23 impliedly reserve water rights appurtenant to land reserved to a  
 24 federal purpose is that the water reserved must be for the federal  
 25 purpose and can only be reserved to the extent it is  
 26 unappropriated. Thus, the doctrine of federal implied-reservation-



1 of-water-rights recognizes the supremacy of previously vested water  
2 rights.

3 **3. Federally Reserved Water Rights are Not Balanced**  
4 **Against Competing Claims and Interests in Water**

5 Last, the doctrine of federally reserved water rights  
6 does not include any equitable principle calling for a balancing of  
7 the competing (non-federal) rights. Id. at 138.

8 In determining whether there is a federally  
9 reserved water right implicit in a federal  
10 reservation of public land, the issue is whether  
11 the Government intended to reserve unappropriated  
and thus available water. Intent is inferred if  
the previously unappropriated waters are necessary  
to accomplish the purposes for which the  
reservation was created.

12 Id. at 139. Where there is an implied reservation of water rights,  
13 the United States is entitled to the full use of the reserved  
14 waters (to the extent not previously appropriated) and the interest  
15 of subsequent appropriators and users of water are not entitled to  
16 consideration or balancing as against the federal right. See, id.

17 **4. Fed.R.Civ.P. 19 Might Still Require Joinder**

18 Despite the fact that state law is inapplicable and that  
19 subsequent appropriators of water would not be entitled to an  
20 equitable balancing of their interests as against the United  
21 States' interest, Fed.R.Civ.P. 19 might require joinder of ground  
22 water claimants.

23 Joinder of the ground water claimants would be required  
24 if: (1) in their absence complete relief could not be accorded  
25 among those already parties, or; (2) their claims to groundwater  
26 relate to the subject of this action (the U.S. and Tribe's claims

1 to waters from the Walker River) and proceeding without the  
2 groundwater claimants might (i) as a practical matter impair or  
3 impede their ability to protect their interests or (ii) leave any  
4 of the current parties subject to a risk of multiple or  
5 inconsistent obligations. Fed.R.Civ.P. 19(a).

6 The groundwater claimants are necessary to accord  
7 complete relief to those already parties only if their water rights  
8 somehow affect the water rights of the parties. Likewise, their  
9 claims to groundwater relate to the claims to waters from the  
10 Walker River only if the claims are somehow related, or  
11 interdependent.

12 Thus, joinder of the groundwater claimants is required  
13 under Rule 19 only if groundwater claims and rights somehow affect  
14 the water rights of the parties who have or claim rights to the  
15 waters of the Walker River, or vice versa.

16 **5. No Adequate Relationship is Alleged**

17 As discussed previously, The U.S. and the Tribe have only  
18 managed to indicate that there is some degree of hydrological  
19 connection between the surface waters of the Walker River and the  
20 ground waters of the Walker River basin. Establishing the  
21 existence of such a connection merely establishes the possibility  
22 that surface water rights will come into conflict and competition  
23 with ground water rights. Numerous other factors must also be  
24 considered in determining if there is any likelihood of conflict  
25 between the surface and groundwater claimants.  
26

1           If there were any currently ascertainable conflict such  
2 might be the basis of new litigation. Neither the U.S. nor the  
3 Tribe indicate that there is any current conflict between surface  
4 and ground water claimants.

5           In light of the fact that the additional water rights  
6 claimed by the U.S. and the Tribe will in all likelihood be small  
7 in relation to the total amount of water appropriated from the  
8 Walker River, it is unreasonable to assume that these additional  
9 water rights will be the figurative straw that breaks the camel's  
10 back. Without more specific allegations, this Court will not  
11 assume the claimed right to additional water from the Walker River  
12 will tip the scales and result in competition between surface and  
13 ground water claimants.

14           All that the U.S. and the Tribe have provided is a basis  
15 for speculation. Mere speculation is insufficient to require  
16 joinder, see, ARMCO v. Steel Corp. v. United States, 490 F.2d 688,  
17 690 (8th Cir. 1974), of all ground water claimants in the Walker  
18 River basin in this litigation which focuses primarily on competing  
19 claims to the limited surface waters of the Walker River and its  
20 tributaries.

21           For the above reasons, the claim that surface and  
22 groundwater users are or will be in competition for waters  
23 comprising a single res is speculative and insufficient to require  
24 joinder under Rule 19 of groundwater claimants located in the  
25 Walker River basin.  
26

IT IS FURTHER ORDERED that to the extent the United States' motion for instructions (Doc. #23) became a motion for joinder (see Doc. #29) under Fed.R.Civ.P. 19 and was joined in as such by the Walker River Paiute Tribe (see Doc. #26), said motions are DENIED.

Edward C. Reed  
UNITED STATES DISTRICT JUDGE